THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION Nos.1432, 1447, 1055 and 1056 of 2006

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Dated:28.03.2006

WRIT PETITION No.1432 of 2006

Between:

Sunkanuru Adivappa.

..... PETITIONER

AND

The District Collector, Kurnool, and others.

.....RESPONDENTS

WRIT PETITION No.1447 of 2006

Between:

G.Veerabhadrappa.

..... PETITIONER

AND

The District Collector, Kurnool, and others.

.....RESPONDENTS

WRIT PETITION No.1055 of 2006

Between:

Sunkanuru Viswanath.

..... PETITIONER

AND

The District Collector, Kurnool, and others.

.....RESPONDENTS

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WRIT PETITION No.1056 of 2006

Between:

Sunkanuru Siva Prasad.

..... PETITIONER

AND

The District Collector, Kurnool, and others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION Nos.1432, 1447, 1055 and 1056 of 2006

COMMON ORDER:

All the four writ petitions are filed assailing the notice issued by the Mandal Revenue Officer, the second respondent herein, purportedly under Section 6 of the Andhra Pradesh Land Encroachment Act, 1905 ('the LE Act' for brevity), calling upon the petitioners to remove the encroachment of the land in Survey Nos.240, 266/B and 267 situated at Kowthalam Village and Mandal, Kurnool District. As the background of all the cases is similar, it is necessary to dispose of by a common order.

Taking W.P.No.1432 of 2006, the fact of the matter may be noticed. The petitioner's father, Guru Siddappa, allegedly purchased the land admeasuring Acs.4.11 cents in Survey No.240 under two sale deeds, dated 18.07.1954 and 28.06.1960. After the death of Guru Siddappa, there was partition between the petitioner herein and his brother, Sugurappa, in which the petitioner got Acs.2.05 cents. It appears, the Andhra Pradesh Wakf Board, the third respondent herein, addressed a letter to the District Collector on 08.10.2004 to recover possession of the lands in Survey Nos.240, 266, 267 and 288 of Kowthalam Village, which is in possession of the petitioner and others. The first respondent, thereafter, by proceedings in RC.No.E8/1871/2004, dated 27.11.2004, directed the second respondent to take action to evict the petitioner and eight others, and further directed the petitioner and others to handover the land within a period of thirty days. The proceedings were issued purportedly under Section 52 of the Wakf Act, 1995 (for short 'the Act'). The petitioners in other writ petitions were also issued notices by the Mandal Revenue Officer, based on the proceedings of the first respondent. Aggrieved by the same, the present Writ Petitions are filed.

It is contended that in 1969 the A.P.Wakf Board through its Regional Wakf Officer, Anantapur, filed a suit, being O.S.No.7 of 1969 on the file of the Court of the Subordinate Judge, Adoni, seeking recovery of possession, and subsequently, filed I.A.No.433 of 1971 under Order XXIII Rule 3 of the Code of Civil Procedure, 1908, to withdraw the suit with a liberty to file a fresh suit. Though the learned Subordinate Judge allowed the said application to withdraw the suit, permission to file a fresh suit was rejected, and the said judgment having become final, the Wakf Board cannot claim any right, title or possession in respect of the lands in Survey Nos.240, 266, 267 and 288 of Kowthalam Village. It is also contended that even according to the provisions of Section 52 of the Act, it is not competent to the Mandal Revenue Officer to issue notice/order under Section 6 of the LE Act.

The Chief Executive Officer of the Wakf Board has filed a counter affidavit. While denying the title of the petitioners, it is stated that the land admeasuring Acs.38.11 cents in Survey Nos.240, 266, 267 and 286 situated at Kowthalam Village belongs to Dargah Hzt. Jagadguru Hazrath Khaja Syed Shah Khader Ling Saheb, and that the Survey Commissioner of Wakf surveyed the above Institution and attached the lands, and a notification was published in A.P.Gazette No.18-A, dated 02.05.1963, at Serial No.1585. Referring to the suit, being O.S.No.7 of 1969, it is stated that the suit was withdrawn before adjudication, and the same does not bar the Wakf Board from taking action as per Sections 51 and 52 of the Wakf Act. The Writ Petitions are also opposed on the ground that against the proceedings of the District Collector directing the person in occupation to handover possession, the aggrieved person has to file an appeal before the Wakf Tribunal, and the Writ Petitions are not maintainable.

Heard the learned Counsel for the petitioners, the learned Standing Counsel for the A.P.Wakf Board and the learned Assistant Government Pleader for Revenue (General).

A perusal of Section 52 of the Act would show that if the Wakf Board after making enquiry in the manner prescribed is satisfied that immovable property of a Wakf has been transferred without previous sanction of the Board in contravention of Section 51 of the Act, it may send a requisition to the District Collector to obtain and deliver possession of the property. At this stage as rightly pointed out by the learned Counsel for the petitioners it is incumbent on the part of the Wakf Board to conduct such enquiry as is necessary and as prescribed, before satisfying itself that the property is Wakf property, and that such wakf property has been transferred without sanction of the Wakf Board in contravention of Section 51 of the Act. In the second stage a Wakf Board has to request the District Collector to obtain and deliver possession to the Board. After receiving such requisition, the District Collector has to pass an order directing the person in occupation of the property to deliver the property to the Board within thirty days from the date of the service of the order. In case, the person fails to handover possession of the property within thirty days as ordered by the District Collector under Section 52(2) of the Act, the remedy of the revenue officials is not under LE Act. Therefore, the impugned order/notice issued by the Mandal Revenue Officer under Section 6 of the LE Act is *ex facie* illegal. It is for the District Collector and the Mandal Revenue Officer to obtain possession as

requested by the Wakf Board and as ordered by the District Collector by following the procedure as contemplated under Section 52(5) of the Act, but not certainly under the LE Act. It is also necessary to observe that if any person is aggrieved by an order passed and served on the person in occupation under Section 52(2) of the Act, he is given a remedy to prefer an appeal to Wakf Tribunal.

For the above brief reasons, these Writ Petitions have to be allowed. It shall also be open to the petitioners to seek redressal insofar as the order, dated 27.11.2004, of the District Collector is concerned before the Wakf Tribunal. In such an event, the claim of the petitioners and the claim of the Wakf Board have to be decided by the Wakf Tribunal without in any manner influenced by the observations made hereinabove.

The Writ Petitions to the extent as above are accordingly allowed. No costs.

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(V.V.S.RAO, J)

28.03.2006

Note: Issue C.C. by 29.03.2006

B/o.

vs